

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREGORY D. BENNETT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

06-cr-126-bbc
14-cv-392-bbc

Petitioner Gregory Bennett has filed a notice of appeal and a request for a certificate of appealability from the September 4, 2014 order denying his post conviction motion under 28 U.S.C. § 2255 and the October 10, 2014 order denying his motion for reconsideration.

Although it appears that the appeal is untimely, it is not within this court's authority to determine the timeliness of an appeal; that decision is for the court of appeals to make.

Petitioner's notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a petitioner who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis

without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.”

Petitioner had appointed counsel during the criminal proceedings against him and I do not intend to certify that the appeal is not taken in good faith. Petitioner’s challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit.

Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

Petitioner Gregory Bennett’s motion to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability was denied in the order entered on September 4, 2014, denying petitioner’s motion for post conviction relief. Dkt. 8.

Entered this 17th day of November, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge